IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 33 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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C.I.T. - Applicant(s)

Versus

TUNGBHADRA INVESTMENT PVT.LTD. - Respondent(s)

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Appearance :
MR BB NAIK for Applicant
MR RK PATEL for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 15/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The Board shows the endorsement “Notice not

received back". Mr.B.B.Naik, the learned standing counsel appears on behalf of the applicant and states that he has instructions to appear in the matter and accepts notice. He also undertakes to file his appearance on or before 20th February 2006. Mr.Naik further requests that filing of the paper-book may be dispensed with as the issues referred by the Tribunal already stand concluded in light of the answers rendered by this Court in the case of CIT v. Brahmi Investments Pvt. Ltd. by judgement rendered on 10/2/2006 in Income Tax Reference No.102 of 1995.

2. It is common ground between the parties that the questions stand concluded by the aforesaid decision rendered by this Court. In the circumstances, the prayer for dispensing with filing of the paper-book is granted, and the Reference is taken up for final hearing and disposal today with the consent of the learned

counsel.

3.The following two questions have been referred by the Income Tax Appellate Tribunal under Section 256(1) of the Income Tax Act, 1961:

> “[1] Whether the Appellate Tribunal is right in law and on facts in holding that, in view of section 49(1)(iii)(e) capital gain should be computed by taking the cost in the hands of the previous owner, namely, KPPL?
>
> [2] Whether the Appellate Tribunal is right in law and on facts in holding that inspite of section 46(2) capital gains chargeable to tax had not arisen in this case in view of the fact that benefit of section 47(v) would be available to the assessee?”

4.For the reasons stated in judgement and order

dated 10/2/2006 rendered in case of CIT v. Brahmi Investments Pvt. Ltd., I.T.R. No.102 of 1995, question No.1 is answered in the affirmative i.e. in favour of the assessee and against the revenue, while question No.2 is answered in the negative i.e. in favour of the revenue and against the assessee.

5.The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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